IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7792 OF 2006

M/s. Kanhaiyalal Bantalal
Lahoti and Co. ..Petitioner

Vs.

Sahebrao Jaiwantrao Deshmukh
and ors. ..Respondents

Mr. R.A. Thorat for petitioner.
Mr. P.P. Killedar for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : April 12, 2007.

P.C.:

1. Heard Mr. Thorat the learned counsel for the petitioner-original defendant no.1 and Mr. Killedar the learned counsel for the respondent no.1-original plaintiff.

2. Regular Civil Suit No. 157 of 1995 (Old R.C.S. No.560 of 1982) came to be decided on 17/9/2002 and it was, in fact, allowed in favour of

the landlord. The defendant nos.1 and 2 were directed to hand over peaceful and vacant possession of the suit premises to the plaintiff within two months and the defendant nos.1 to 3 were further directed to hand over the peaceful and vacant possession of the suit property i.e. CTS No.3510, more particularly described in Para No.1-B of the plaint to the plaintiff within two months from the date of the order. In addition, the defendants were directed to pay the compensation at the rate of Rs.6000/- per year to the plaintiff from the date of the filing of the suit till the peaceful and vacant possession of the suit premises was delivered to the plaintiff. This decree came to be challenged in Regular Civil Appeal No.418 of 2002 and in the said appeal the defendants moved an application at Exh.20 seeking amendment in the Written Statement filed by this in RCS No.157 of 1995. The Lower Appellate Court rejected the said application stating that the additional points sought to be agitated by amendment were simply the points of law which could be otherwise agitated in the appeal without even seeking amendment to the Written Statement. This was noted in the order passed by this

court on 30/11/2006 and notices were issued to the respondents and more particularly respondent no.1 so that the petitioner could be disposed off at the admission stage itself. In the order dated 30/11/2006 this court noted down the following two issues proposed to be raised in the pending appeal:-

(a) That the suit is not maintainable under the Rent Act and the Court has no jurisdiction; and

(b) No relief of possession of the property possessed jointly can be granted under the provisions of the Bombay Rent Act.

3. There is no doubt that both the above mentioned issues are the issues of law and they could be agitated in support of the appeal which is already pending. Hence the view taken by the Lower Appellate Court in rejecting the amendment application does not call for any interference.

4. In the premises this petition fails and the same is hereby rejected summarily. However, the petitioner-defendant is allowed to advance its argument in the pending appeal in support of the above mentioned two issues of law.

(B.H. Marlapalle,J.)